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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,862	01/09/2002	Nobuhiro Kawamura	FUJY 19.313	8426

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EXAMINER	
JEAN GILLES, JUDE	

ART UNIT	PAPER NUMBER
2143	

MAIL DATE	DELIVERY MODE
07/29/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/043,862	KAWAMURA, NOBUHIRO	
	Examiner	Art Unit	
	JUDE J. JEAN GILLES	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 May 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1, 2, 7-13, 18, and 23-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,7-13,18 and 23-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 January 2002* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05/19/2008 has been entered.

Response to Arguments

2. Applicant's arguments, see RCE filed on 05/19/2008, on page 2 with respect to the rejection(s) of claim(s) 1-25 under current examination have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground of rejection is made in view of Yamamura and Ha (see rejections below).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. **Claims 1, 2, 7-13, 18, 23-25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamura et al (Yamamura), Patent No. 6,028,838 in view of Ha et al (Ha) US 20020150048 A1.

Regarding **claim 1**, Yamamura discloses a providing service control device comprising:

a module obtaining performance information indicating a state of a traffic congestion from a monitor target network (see Yamamura; column 30, lines 50-67; column 31, lines 1-33);

a module storing information, of a service level agreement for a user, including service levels substitutionally providable for the user, the service levels providable corresponding to the state of the traffic congestion (see Yamamura; column 31, lines 1-46); and

a control module determining the substitutionally providable service for every user on the basis of the obtained performance information and the contract data, and having the corresponding service provided to a client terminal used by the user (see Yamamura; column 30, lines 50-67; column 31, lines 1-46); and

wherein said control module controls a server within a provider network, and has the corresponding service provided to said client terminal used by the user (see Yamamura; column *6, lines 54-67; and column 7, lines 1-8; Note the controller 31 (control module) controls the navigation server within the service provider to correspond with user terminal 11*);

said control module further changes a data size of data transmitted by said server to said client terminal as the corresponding service (see Yamamura; column 7, *lines 45-65; Note the role of the optimizing portion 44 which directly deals with the data size from the server to the terminal*); and

the changed data to be transmitted by said server to said client terminal is different-data-size content data registered previously in said server by a content provider (*see column 7, lines 45-65; and column 8, lines 12-50*).

Although Yamamura teaches substantial features of the invention, Yamamura is not very explicitly disclose "said control module further changes a data size of data transmitted by said server to said client terminal as the corresponding service" as submitted herein and discussed during the interview on 11/30/2007. In an analogous art, Ha teaches a system that provides the mechanism of transforming the data size from a server to a client in the context of controlling congestion in a network. Ha discloses "… *detection of congestion loss may cause the server 102 to substantially reduce the size of the congestion window and the corresponding number of unacknowledged packets the server may transmit to the client. The error recovery mechanisms may also be susceptible to signal handoffs and deep fades in that the unacknowledged packets may cause an exponential increase in the retransmit timer and a corresponding decrease in the data throughput, which in many cases may represent overly aggressive responses to the actual problems*…" (see Ha; par. 0035).

Accordingly, it would have been obvious for an ordinary skill in the art to incorporate the technique of Ha within the system of Yamamura for the purpose of

"provide systems and method for data transport acceleration and management within a network communication system" as stated by Ha in par. 0010-0011. By this rationale, claim 1 is rejected.

Regarding **claim 2**, The combination Yamamura-Ha discloses a providing service control device according to claim 1, wherein said monitored target network is an IP network including the Internet and a provider network, and said providing service control device is disposed in said provider network (see Yamamura; column 1, lines 12-26).

Regarding **claim 7**, The combination Yamamura-Ha discloses a providing service control device according to claim 1, further comprising a module notifying said client terminal of the obtained performance information (see Yamamura; column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 8**, The combination Yamamura-Ha discloses a providing service control device according to claim 7, further comprising a module receiving a service level change request that responds to the performance information of which said client terminal has been notified (see Yamamura; column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 9**, The combination Yamamura-Ha discloses a network system comprising:

(A) a providing service control device comprising:

(a) a module obtaining performance information indicating a state of a traffic congestion from a monitored target network (see Yamamura; column 30, lines 50-67; column 31, lines 1-33);

(b) a module storing information, of a service level agreement for a user, including service levels substitutionally providable for the user, the service levels providable corresponding to the state of the traffic congestion (see Yamamura; column 30, lines 50-67; column 31, lines 1-33); and

(c) a control module determining the substitutionally providable service on the basis of the obtained performance information and the service level agreement, and having the corresponding service provided to a client terminal used by the user (see Yamamura; column 30, lines 50-67; column 31, lines 1-46); and

(B)said client terminal comprising:

(d) a module independently obtaining performance information indicating a state of a traffic congestion from said monitored target network (see Yamamura; column 30, lines 50-67; column 31, lines 1-33); and

(e) a module executing a service level change request on the basis of the independently obtained performance information (see Yamamura; column 30, lines 50-67; column 31, lines 1-46); and

wherein said control module controls a server within a provider network, and has the corresponding service provided to said client terminal used by the user (see Yamamura; column *6, lines 54-67; and column 7, lines 1-8)*;

said control module further changes a data size of data transmitted by said server to said client terminal as the corresponding service (see Ha; par. 0035); and

the changed data to be transmitted by said server to said client terminal is different-data-size content data registered previously in said server by a content provider (*see Yamamura; column 7, lines 45-65; and column 8, lines 12-50;* see Ha; par. 0035).

Regarding **claim 10**, The combination Yamamura-Ha discloses a network system according to claim 9, wherein said providing service control device further comprises a module notifying said client terminal of the obtained performance information, and said client terminal further comprises a module receiving the performance information of which said providing service control device has notified (see Yamamura; column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 11**, The combination Yamamura-Ha discloses a network system according to claim 10, wherein said providing service control device further comprises a module receiving the service level change request that responds to the performance information of which said client terminal has been notified (see Yamamura; column 30, lines 50-67; column 31, lines 1-67), and

said client terminal further comprises a module executing the service level change request based on the performance information of which said providing service control device has notified (see Yamamura; column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 12**, The combination Yamamura-Ha discloses a network system according to claim 11, wherein said client terminal further comprises a module controlling said client terminal itself on the basis of any one of the independently obtained performance information and the performance information of which said providing service control device has notified (see Yamamura; column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 13**, The combination Yamamura-Ha discloses a network system according to claim 9, wherein said monitored target network is an IP network including the Internet and a provider network, and said providing service control device is disposed in said provider network (see Yamamura; column 1, lines 12-26).

Regarding **claim 18**, The combination Yamamura-Ha discloses a providing service control method comprising:

obtaining performance information indicating a state of a traffic congestion from a monitored target network (see Yamamura; column 30, lines 50-67; column 31, lines 1-46);

storing information, of a service level agreement for a user, including service levels substitutionally providable for the user, the service levels providable corresponding to the state of the traffic congestion (see Yamamura; column 30, lines 50-67; column 31, lines 1-46); and

determining the substitutionally providable service for every (the) user on the basis of the obtained performance information and the service level agreement, and

having the corresponding service provided to a client terminal used by the user (see Yamamura; column 30, lines 50-67; column 31, lines 1-46); and

controlling a server within a provider network, and having the corresponding service provided to said client terminal used by the user (see Yamamura; column *6, lines 54-67; and column 7, lines 1-8)*; and

changing a data size of data transmitted by said server to said client terminal as the corresponding service (see Ha; par. 0035);

wherein the changed data to be transmitted by said server to said client terminal is different-data-size content data registered previously in said server by a content provider (*see Yamamura; column 7, lines 45-65; and column 8, lines 12-50;* see Ha; par. 0035).

Regarding **claim 23**, The combination Yamamura-Ha discloses a providing service control method according to claim 18, further comprising notifying said client terminal of the obtained performance information (see Yamamura; column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 24**, The combination Yamamura-Ha discloses a providing service control method according to claim 23, further comprising receiving a service level change request that responds to the performance information of which said client terminal has been notified(see Yamamura; column 30, lines 50-67; column 31, lines 1-46).

Regarding **claim 25**, The combination Yamamura-Ha discloses a readable-by-computer recording medium recorded with a program read by a computer to execute:

obtaining performance information indicating a state of a traffic congestion from a monitored target network (see Yamamura; column 30, lines 50-67; column 31, lines 1-46);

storing information, of a service level agreement for a user, including service levels substitutionally providable for the user, the service levels providable corresponding to the state of the traffic congestion (see Yamamura; column 30, lines 50-67; column 31, lines 1-46); and

determining the substitutionally providable service for every (the) user on the basis of the obtained performance information and the service level agreement, and having the corresponding service provided to a client terminal used by the user (see Yamamura; column 30, lines 50-67; column 31, lines 1-46); and

controlling a server within a provider network, and having the corresponding service provided to said client terminal used by the user (see Yamamura; column *6, lines 54-67; and column 7, lines 1-8)*; and

changing a data size of data transmitted by said server to said client terminal as the corresponding service (see Ha; par. 0035);

wherein the changed data to be transmitted by said server to said client terminal is different-data-size content data registered previously in said server by a content provider (*see column 7, lines 45-65; and column 8, lines 12-50;* see Ha; par. 0035).

Conclusion

4. ***This action is made Non-Final***. Any inquiry concerning this communication or earlier communications from examiner should be directed to Jude Jean-Gilles whose telephone number is (571) 272-3914. The examiner can normally be reached on Monday-Thursday and every other Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn, can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-3301.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0800.

/Jude J Jean-Gilles/

Primary Examiner, Art Unit 2143

July 28, 2008